

- (2) The Preliminary Hearing Order of the Administrative Law Judge should be affirmed. The Administrative Law Judge had the opportunity to personally observe claimant and respondent's general manager, Michael Williams, testify and assess their demeanor and

credibility. The Appeals Board agrees with the analysis and conclusion of the Administrative Law Judge and finds that claimant's version of the accident is persuasive, despite the testimony of others and the videotape presented. The Appeals Board finds for preliminary hearing purposes that claimant has proven it is more probably true than not that he sustained personal injury by accident arising out of and in the course of his employment with respondent on June 9, 1995, while moving a large laundry cart.

(3) The Administrative Law Judge acted within his authority and discretion in refusing to order payment of medical bills incurred prior to the date of filing of the Application for Preliminary Hearing. Therefore, the Appeals Board does not have jurisdiction, at this juncture of the proceeding, to address that issue under either K.S.A. 44-534a or K.S.A. 44-551.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Alvin E. Witwer's Preliminary Hearing Order dated August 28, 1995, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael R. Wallace, Overland Park, Kansas
Mark E. Kolich, Kansas City, Kansas
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director